

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of S.N.,)	
Petitioner)	
And)	CAUSE NO. 060609-45
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

Petitioner is a 16-year-old student who presently attends Rensselaer Central High School (Rensselaer), a public high school located in the Rensselaer Central School Corporation. Petitioner attended Kankakee Valley High School (Kankakee) within the Kankakee Valley School Corporation for his freshman year (2004-2005) and a portion of the fall semester of the 2005-2006 school year. As a freshman, Petitioner participated on the freshman baseball and football teams for Kankakee. During his tenth grade year, Petitioner participated on the junior varsity football team. At all times relevant, Petitioner's parents have resided within the attendance area of the Kankakee Valley School Corporation.

On September 16, 2005, Petitioner was suspended from Kankakee pending expulsion. An expulsion meeting was conducted on October 4, 2005. After the expulsion meeting, it was discovered that Petitioner had a Section 504 Alternative Learning Plan. Educational services were extended to the Petitioner pending the outcome of a manifestation determination. Although the Section 504 manifestation conference determined there was no causal relationship between Petitioner's disability and his misconduct, Petitioner was referred for an evaluation to determine whether Petitioner was eligible for services under the Individuals with Disabilities Education Act. The evaluation was completed and on October 26, 2005, the case conference committee determined Petitioner was not eligible for special education services. On November 10, 2005, Petitioner was expelled. The expulsion examiner determined that core educational opportunities continue for Petitioner and the expulsion would be reviewed in December, 2005. On December 9, 2005, the expulsion examiner recommended Petitioner be allowed to return to school under the terms of a Waiver of Due Process Rights; Probationary Continued Education Agreement.

Petitioner's parents determined it was not in Petitioner's best interests to continue at Kankakee. Petitioner was enrolled at Rensselaer and began attending Rensselaer on January 3, 2006.

Petitioner requested a determination of his eligibility to participate in athletics during the 2006-2007 school year. The Respondent, by its Assistant Commissioner, on March 22, 2006, found Petitioner eligible to participate with limited eligibility pursuant to the Respondent's Rule **C-19-6.2**.¹ Rule **C-19-6.2** provides for limited eligibility for a student who transfers without a corresponding change of residence to a new district by the student's parents.

Petitioner, by his parents, requested a review of the ISHAA's decision by Respondent's Review Committee. The Respondent's Review Committee conducted its review on May 1, 2006. The Review Committee determined that Petitioner did not show that there exists an undue hardship² that would result from enforcement of the transfer rule. The Review Committee issued its

¹Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are "common" to all potential athletes and, hence, begin with "C." Rule **C-19-6.2** is "common" to both genders. (All references are to the 2005-2006 by-laws of Respondent.)

²The Hardship Rule provides, in pertinent part:

C-17-8.1 General

Except with respect to Rules 4 [Age], 12 [Enrollment and Attendance] and 18 [Scholarship], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of any Rule when the affected party establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

* * *

C-17-8.4 General Consideration

- a. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, a disregard of a decision or directive made under these Rules, or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party.
- b. Injury, illness or accidents which cause a student to fail to meet a basic requirement are possible causes for a hardship consideration.
- c. Likewise, a change in financial condition of the student or a student's family may be considered a hardship, however, such conditions or changes in conditions must be permanent, substantial and significantly beyond the control of the student or the student's family.

C-17-8.5

In addition to the foregoing, in transfer cases under Rule 19-6 [Transfer Eligibility Without Change of Residence], the Commissioner, his designee or the Committee shall have the authority to set aside the effect of the transfer rule and grant a student full eligibility following a transfer if (a) the student continues to reside with his/her parent(s) or guardian(s); (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic-related motives surrounding the transfer; and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there is no athletic-related motives surrounding the transfer.

decision on May 9, 2006, upholding the IHSAA's decision declaring Petitioner to have limited eligibility at Rensselaer for 365 days from the date of his last athletic contest at Kankakee, provided he meets all other applicable IHSAA eligibility rules.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel³ on June 9, 2006. Petitioner requested the hearing be held during the first two weeks of August, 2006. The parties were notified on June 12, 2006, of their respective hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. The parent notified the CRP on June 18, 2006, that he wished for the proceedings in this matter to be closed to the public. Hearing was set for August 9, 2006, at the State House, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On August 9, 2006, the CRP convened.⁴ The Petitioner was not present in person but was represented by his parents. The Respondent appeared by counsel.

Testimony was provided under oath or by affirmation. In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner is a 16-year-old junior (d/o/b October 4, 1989) enrolled in Rensselaer Central High School located in the Rensselaer Central School Corporation.
2. At all times relevant, Petitioners parents have resided within the attendance area of the Kankakee Valley School Corporation.
3. Petitioner was expelled from Kankakee Valley High School during the fall semester of the 2005-2006 school year. Kankakee Valley High School notified Petitioner in December, 2005, that he could return to school for the spring semester, conditioned upon

³The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any by-law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

⁴Seven members were present: Joan Keller, Chair; Scott F. Eales; James Perkins, Jr.; Stephen J. Psikula; Earl H. Smith, Jr.; Melissa Starry; and Brad Tucker.

his parents waiving future rights to contest expulsion proceedings during the spring semester.⁵

4. Rather than waive Petitioner's rights at Kankakee Valley, Petitioner's parents chose to enroll him at Rensselaer.
5. Petitioner participated on the freshman baseball and football teams for Kankakee during his ninth grade year. During his tenth grade year, Petitioner participated on the junior varsity football team. The last game that Petitioner participated in was on September 12, 2005.
6. Petitioner's parents completed the IHSAA Transfer Report indicating that a hardship determination under Rule **C-17-8.1** was sought. Rensselaer completed the Transfer Report recommending full eligibility due to hardship. Kankakee Valley completed the Transfer Report recommending limited eligibility. Neither school indicated the transfer was athletically motivated.
7. Although Petitioner was eligible to attend school at Kankakee Valley during the spring semester of the 2005-2006 school year and during the 2006-2007 school year, his parents chose to enroll him at Rensselaer.

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.

⁵Petitioner presented testimony and argument that appeared to challenge the appropriateness of the discipline imposed by Kankakee. The Case Review Panel has no authority or jurisdiction over discipline imposed by schools and makes no judgment as to the appropriateness of any disciplinary action taken.

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. **Rule C-19-6.1** provides immediate eligibility for a student who transfers schools without a change of residence by the student's parent or guardian. Petitioner does not meet any of the criteria under this Rule, nor does Petitioner argue that he does. Accordingly, Rule C-19-6.1 does not apply.
4. A student who transfers without a corresponding change of residence to a new district by the student's parents may be declared to have limited eligibility⁶ pursuant to **Rule C-19-6.2** unless the transfer was primarily for athletic reasons⁷ (in which case the student would be ineligible for 365 days), or unless there exist circumstances showing an undue hardship would result from enforcement of the Rule.
5. In submitting the IHSA Athletic Transfer Report, Petitioner sought a hardship transfer pursuant to **Rule 17-8.1**. The evidence does not support a conclusion that application of the transfer rules would be an undue hardship for Petitioner.
6. Neither school signed the hardship verification pursuant to **Rule 17-8.5**.

⁶Respondent's by-laws provide the following definition: **Limited Eligibility** - A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team.

⁷Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

ORDER

Respondent's determination that Petitioner shall have limited eligibility for 365 days from his last participation at Kankakee Valley High School is upheld. This was determined by unanimous vote.

DATE: August 14, 2006

/s/Joan L. Keller, Chair
Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.